

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0417P

Sales & Use Tax

Calendar Years 1996, 1997, & 1998

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ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the negligence penalty.

STATEMENT OF FACTS

The negligence penalty was assessed on a sales and use tax assessment resulting from an audit conducted for the calendar years 1996, 1997, & 1998.

The taxpayer is an affiliate of several tanning parlor chains owned by the shareholder of this corporation. This corporation exists to purchase from primary suppliers, some of which will not directly sell to end users. The taxpayer is located in Indiana.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer argues the penalty should be waived as the taxpayer has been compliant with tax reporting over the years. In this audit, the error in the audit resulted from a confusing tax compliance policy that resulted from a shortage of employees.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions

provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer was inattentive to tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer’s penalty protest is denied.